

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
Ag-Air Flying Services, Inc., ) Docket No. FIFRA-10-2005-0065  
 )  
Respondent )

**ORDER ON COMPLAINANT'S MOTION FOR LEAVE TO FILE OUT OF TIME  
AND TO SHORTEN TIME FOR RESPONSIVE PLEADINGS**

An Order Scheduling Hearing, dated September 1, 2005, set a due date of November 30, 2005 for all prehearing motions, and set the hearing in this matter for February 7 through 10, 2006. By Order dated September 8, 2005, the hearing was re-scheduled to commence on February 14, 2006, and continue through February 17, 2006. On January 20, 2006, Complainant filed a Motion for Leave to File Out of Time and to Shorten Time for Responsive Pleadings, along with a Motion to Reschedule Hearing and Motion for Default for Failure to Submit Additional Discovery.

As grounds for the Motion for Leave to File Out of Time, Complainant states that the factual basis for these motions recently became ripe. Complainant requests that the time be shortened for filing responses to the motions, because they may have an impact on the scheduled hearing, and there is very limited time before the date of hearing.

The Complainant's Motion for Default is based upon the Complainant's assertion that Respondent did not submit the discovery documents which were requested by Complainant and which Respondent was required, by Order dated December 19, 2006, to submit on or before January 6, 2006. The Motion for Default could not have been filed by the prehearing motion due date of November 30, 2005. It is noted that Complainant did not state in the Motion for Leave to File Out of Time whether or not it contacted Respondent to determine whether it opposes the Motion, as directed in the Prehearing Order issued in this matter on March 22, 2005. However, Complainant stated in the accompanying Motion for Default and Motion to Reschedule that Complainant has been unable to learn whether Respondent opposes those Motions, so it can be presumed that Complainant also was unable to determine, prior to filing, whether Respondent opposed the Motion for Leave to File Out of Time. As there are no grounds upon which Respondent could successfully oppose the request for Leave to File Out of Time, and given the limited time before the hearing, the request will be granted without waiting for a response.

As to the request to shorten the time for filing responses to motions, the Consolidated Rules of Practice (Rules), 40 C.F.R. part 22 provide that "A party's response to any written motion must be filed within 15 days of service of such motion. . . .The Presiding Officer . . . may

set a shorter or longer time for response . . . .” 40 C.F.R. § 22.16(b). The Rules provide that where a document is served by first class mail, five days shall be added to the time allowed by the Rules. 40 C.F.R. § 22.7(c). As the Motions for Default and to Reschedule Hearing were filed and served by first class mail on January 20, 2006, responses would be due on February 9, 2006, only two working days prior to the hearing. Even if rulings on the Motions could be issued on one of those two days, the parties would need to prepare for the hearing to begin on February 14, 2006. Spending time and resources to prepare for a hearing until it is either cancelled upon a default order, or rescheduled, a day or even a few days before the hearing, would be exceedingly unfair to both parties, and may also inconvenience the many proposed witnesses in this case. Therefore, the request to shorten the time for responses to motions will be granted.

Given the circumstances of this case, including the Respondent’s lack of cooperation in providing information in this proceeding,<sup>1</sup> the simplicity of the issues raised in the Motion for Default and in the Motion to Reschedule Hearing, the imminence of the hearing, and the need for adequate notice to the parties as to any rescheduling or cancellation of the hearing, Respondent shall have until January 26, 2006 to file any responses to the Motion for Default and Motion to Reschedule Hearing. Pursuant to 40 C.F.R. § 22.4(c)(10),<sup>2</sup> Respondent shall be required to submit any such responses by facsimile to the undersigned and to counsel for Complainant.

Accordingly, IT IS ORDERED THAT:

1. Complainant’s Motion for Leave to File Out of Time is hereby **GRANTED**.
2. Complainant’s Motion to Shorten Time for Responsive Pleadings is hereby **GRANTED**. Respondent shall file and serve any responses to the Complainant’s Motion for Default or Motion to Reschedule Hearing on or before **January 26, 2006**. Respondent shall send any such responses **by facsimile** to the undersigned and to Complainant’s counsel on or before **January 26, 2006**.

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Susan L. Biro  
Chief Administrative Law Judge

Dated: January 24, 2006  
Washington, D.C.

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<sup>1</sup> See, Order dated December 19, 2005, at 10.

<sup>2</sup> 40 C.F.R. § 22.4(c)(10) provides that the Presiding Officer may “Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings” governed by the Rules.